

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI

HEALTHMATE INTERNATIONAL, LLC,	)	
a Missouri corporation,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:15-cv-761
	)	
TIMOTHY W. T. FRENCH,	)	
an individual, and	)	
RAMPANT LION LLC,	)	
a Hawaii limited liability company,	)	
d/b/a 789TENS,	)	
	)	
Defendants.	)	

**COMPLAINT**

COMES NOW Healthmate International, LLC (“Healthmate”), and for its cause of action alleges as follows:

1. This is an action for copyright infringement in violation of the Copyright Act 17 U.S.C. § 101 *et seq.*

**PARTIES, JURISDICTION AND VENUE**

2. Plaintiff Healthmate is a limited liability company organized and existing under the laws of the State of Missouri having an address of 709 East 97th Street, Kansas City, Missouri 64131. Healthmate possesses all rights, title and interest in the copyrights, including the right to sue for infringement.

3. Upon information and belief, Defendant Timothy French is an individual residing at 663 Rancho Santa Fe Road, Apt. 142, San Marcos, California 92078.

4. Upon information and belief, Defendant Rampant Lion LLC is a limited liability company organized and existing under the laws of the State of Hawaii with a principal place of business at 53216 Kamehameha Highway, Unit 557, Hau'ula, Hawaii 96717.

5. This is an action arising under the copyright laws of the United States, 17 U.S.C. § 101 *et seq.*

6. Jurisdiction over this action is conferred upon this Court by 28 U.S.C. §§ 1331 and 1338(a).

7. Nationwide injunctive relief is authorized by 17 U.S.C. § 502(a).

8. Venue is proper in this Court under 28 U.S.C. § 1391 because a substantial part of the events giving rise to these claims occurred in this district. Defendants have conducted business in this district and, on information and belief, committed acts of infringement here.

### **GENERAL ALLEGATIONS**

9. Healthmate repeats and incorporates the allegations contained in the preceding paragraphs.

10. On October 9, 2013 the U. S. Copyright Office issued certificate of registration Reg. No. VA 1-878-383 titled “Twelve-Mode Stimulator” to Healthmate for the work shown below. The registration certificate is attached as Exhibit A.



11. On October 9, 2013 the U. S. Copyright Office issued certificate of registration Reg. No. VAu 1-145-453 titled “Twelve-Mode Stimulator” to Healthmate for the work shown below. The registration certificate is attached as Exhibit B.



12. On October 9, 2013 the U. S. Copyright Office issued certificate of registration Reg. No. VAu 1-145-456 titled “Twenty-Four Mode Stimulator,” to Healthmate for the work shown below. The registration certificate is attached as Exhibit C.



13. The Copyrighted Designs depict graphical displays for various transcutaneous electrical nerve simulation devices, also commonly referred to as TENS massagers.

14. Defendants sell electronic stimulator devices, TENS massagers, and other related products.

15. On information and belief, without a license, Defendants are reproducing and distributing copies of the Copyrighted Designs and preparing derivative works based on the Copyrighted Designs. Examples of the infringing designs are shown below.



16. On May 23, 2014, Defendants entered into a Distribution Agreement with Healthmate to sell Healthmate products including the copyrighted designs.

17. In early 2015, Defendant French's distribution agreement with Healthmate was terminated.

**COUNT I – COPYRIGHT INFRINGEMENT Reg. No. VA 1-878-383**

18. Healthmate repeats and incorporates the allegations contained in the preceding paragraphs.

19. Healthmate is the sole owner of all right, title and interest in and to the VA 1-878-383 Copyrighted Design ("Twelve-Mode Stimulator").

20. Defendants are not authorized to reproduce, advertise, distribute, sell, exhibit or otherwise use the Twelve-Mode Stimulator Copyrighted Design.

21. On information and belief, Defendants have copied and prepared derivative works based upon Healthmate's Twelve-Mode Stimulator Copyrighted Design, and have used the Twelve-Mode Stimulator Copyrighted Design and/or derivative works in its products.

22. On information and belief, Defendants have sold, offered for sale and/or distributed copies of the Twelve-Mode Stimulator Copyrighted Design as well as derivative works based upon the Twelve-Mode Stimulator Copyrighted Design.

23. Defendants' conduct has infringed on Healthmate's rights in the Twelve-Mode Stimulator Copyrighted Design.

24. Defendants' acts are willful, intentional and wanton acts of infringement.

25. Unless enjoined by order of this Court, Defendants will continue to infringe the Twelve-Mode Stimulator Copyrighted Design irreparably harming Healthmate. Healthmate is without an adequate remedy at law. Healthmate is entitled to injunctive relief restraining Defendants from engaging in further acts of copyright infringement.

26. By reason of Defendants' aforesaid infringement of the Twelve-Mode Stimulator Copyrighted Design, Healthmate has sustained and will continue to sustain substantial damages.

27. Healthmate is further entitled to recover from Defendants the damages sustained by Healthmate as a result of Defendants' acts of copyright infringement as herein alleged. Healthmate is unable to ascertain at present the full extent of the monetary damages suffered by reason of Defendants aforesaid acts of copyright infringement.

28. Healthmate is further entitled to recover from Defendants the profits Defendants have obtained as a result of its acts of copyright infringement.

29. Healthmate is, alternatively, entitled to recover from Defendants statutory damages in an amount up to \$150,000 per work that has been infringed.

**COUNT II – COPYRIGHT INFRINGEMENT Reg. No. VAu 1-145-453**

30. Healthmate repeats and incorporates the allegations contained in the preceding paragraphs.

31. Healthmate is the sole owner of all right, title and interest in and to the VAu 1-145-453 Copyrighted Design ("Twelve-Mode Narrow Stimulator").

32. Defendants are not authorized to reproduce, advertise, distribute, sell, exhibit or otherwise use the Twelve-Mode Narrow Stimulator Copyrighted Design.

33. On information and belief, Defendants have copied and prepared derivative works based upon Healthmate's Twelve-Mode Narrow Stimulator Copyrighted Design, and has used the Twelve-Mode Narrow Stimulator Copyrighted Design and/or derivative works in its products.

34. On information and belief, Defendants have sold, offered for sale and/or distributed copies of the Twelve-Mode Narrow Stimulator Copyrighted Design as well as derivative works based upon the Twelve-Mode Narrow Stimulator Copyrighted Design.

35. Defendants' conduct has infringed on Healthmate's rights in the Twelve-Mode Narrow Stimulator Copyrighted Design.

36. Defendants' acts are willful, intentional and wanton acts of infringement.

37. Unless enjoined by order of this Court, Defendants will continue to infringe the Twelve-Mode Narrow Stimulator Copyrighted Design irreparably harming Healthmate. Healthmate is without an adequate remedy at law. Healthmate is entitled to injunctive relief restraining Defendants from engaging in further acts of copyright infringement.

38. By reason of Defendants' aforesaid infringement of the Twelve-Mode Narrow Stimulator Copyrighted Design, Healthmate has sustained and will continue to sustain substantial damages.

39. Healthmate is further entitled to recover from Defendants the damages sustained by Healthmate as a result of Defendants' acts of copyright infringement as herein alleged. Healthmate is unable to ascertain at present the full extent of the monetary damages suffered by reason of Defendants' aforesaid acts of copyright infringement.

40. Healthmate is further entitled to recover from Defendants the profits Defendants have obtained as a result of its acts of copyright infringement.

41. Healthmate is, alternatively, entitled to recover from Defendants statutory damages in an amount up to \$150,000 per work that has been infringed.

**COUNT III – COPYRIGHT INFRINGEMENT Reg. No. VAu 1-145-456**

42. Healthmate repeats and incorporates the allegations contained in the preceding paragraphs.



43. Healthmate is the sole owner of all right, title and interest in and to the VAu1-145-456 Copyrighted Design (“Twenty-Four-Mode Stimulator”).

44. Defendants are not authorized to reproduce, advertise, distribute, sell, exhibit or otherwise use the Twenty-Four-Mode Stimulator Copyrighted Design.

45. On information and belief, Defendants have copied and prepared derivative works based upon Healthmate’s Twenty-Four-Mode Stimulator Copyrighted Design, and has used the Twenty-Four-Mode Stimulator Copyrighted Design and/or derivative works in its products.

46. On information and belief, Defendants have sold, offered for sale and/or distributed copies of the Twenty-Four-Mode Stimulator Copyrighted Design as well as derivative works based upon the Twenty-Four-Mode Stimulator Copyrighted Design.

47. Defendants’ conduct has infringed on Healthmate’s rights in the Twenty-Four-Mode Stimulator Copyrighted Designs.

48. Defendants’ acts are willful, intentional and wanton acts of infringement.

49. Unless enjoined by order of this Court, Defendants will continue to infringe the Twenty-Four-Mode Stimulator Copyrighted Design irreparably harming Healthmate. Healthmate is without an adequate remedy at law. Healthmate is entitled to injunctive relief restraining Defendants from engaging in further acts of copyright infringement.

50. By reason of Defendants’ aforesaid infringement of the Twenty-Four-Mode Stimulator Copyrighted Design, Healthmate has sustained and will continue to sustain substantial damages.

51. Healthmate is further entitled to recover from Defendants the damages sustained by Healthmate as a result of Defendants’ acts of copyright infringement as herein alleged.

Healthmate is unable to ascertain at present the full extent of the monetary damages suffered by reason of Defendants' aforesaid acts of copyright infringement.

52. Healthmate is further entitled to recover from Defendants the profits Defendants have obtained as a result of its acts of copyright infringement.

53. Healthmate is, alternatively, entitled to recover from Defendants statutory damages in an amount up to \$150,000 per work that has been infringed.

### **RELIEF REQUESTED**

WHEREFORE, Healthmate prays for judgment against Defendants as follows:

A. For a preliminary and permanent injunction enjoining Defendants and any associated officers, agents, servants, employees, attorneys, and all persons in active concert or participation with each or any of them, from committing, aiding, encouraging, enabling, inducing, causing, materially contributing to, or otherwise facilitating the unauthorized reproduction or distribution of copies or derivatives of Healthmate's copyrighted works;

B. For all damages to which Healthmate is entitled, including Defendants' profits and Healthmate's lost profits;

C. Alternatively, at Healthmate's election, for statutory damages in the maximum amount allowed by law;

D. That Defendants be held jointly and severally liable on all counts;

E. For prejudgment interest according to law;

F. For Healthmate's attorneys' fees, and full costs and disbursements in this action; and

G. For such other and further relief as the Court may deem proper and just.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury on all issues so triable in this matter.

**DESIGNATION OF PLACE OF TRIAL**

Plaintiff designates Kansas City, Missouri for place of trial.

Dated: September 30, 2015

Respectfully submitted,

/s/ James J. Kernell

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